

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

MARTHA ELENA DURAN

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CRIMINAL NO. 6:13CR73

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On August 23, 2013, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Martha Elena Duran. The government was represented by Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

Pursuant to a written Plea Agreement, Defendant pled guilty to the offense of Conspiracy to Transport an Undocumented Alien within the United States by Means of a Motor Vehicle, a Class C felony. The offense carried a statutory maximum imprisonment term of 5 years. The United States Sentencing Guideline range, based on a total offense level of 14 and a criminal history category of II, was 18 to 24 months. On August 14, 2007, the Honorable Joseph M. Hood of the Southern District of Texas sentenced Defendant to 15 months imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include a \$100 special assessment, drug treatment and testing, and 100 hours of community service to be completed by the second year of supervised release. Defendant completed the term of imprisonment and began her term of supervised release on August 6, 2010. Jurisdiction was transferred to the Eastern District of Texas on August 12, 2013.

Under the terms of supervised release, Defendant was prohibited from using or possessing any unlawful controlled substance. In its petition, the government alleges that Defendant violated her term of supervised release when she submitted urine specimens testing positive for cocaine on June 14, 2013 and positive for benzodiazepines on July 15, 2013.

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing cocaine, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court may revoke probation or supervised release or extend the term of supervised release and/or modify conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade B violation is 6 to 12 months. U.S.S.G. § 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing benzodiazepines, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may revoke probation or supervised release or extend the term of supervised release and/or modify conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations set forth above. The government recommended 30 days imprisonment, with credit for 7 days of time served, and no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Martha Elena Duran be committed to the custody of the Bureau of Prisons for a term of 30 days imprisonment, with credit for 7 days of time served, and no supervised release to follow. Defendant is to report to the Gregg County Jail on Friday, August 30, 2013, at 2 p.m.

Defendant has waived her right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 27th day of August, 2013.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE